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Journal Register East d/b/a New Haven Register and Laborers' International Union of North America, Local Union No. 455, AFL-CIO. Cases 34-CA-11070 and 34-CA-11085

April 28, 2006

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND KIRSANOW

On August 31, 2005, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² In adopting the judge's finding that the Respondent's memorandum asking employees to report to management the union activities of other employees violated Sec. 8(a)(1), Members Schaumber and Kirsanow find it unnecessary to rely on *Tawas Industries*, 336 NLRB 318 (2001), cited by the judge. In that case, the employer's notice was in response to employee reports of actual threats and coercion and invited employee reports of threats or coercion by any party to the election. Here, the Respondent's memo was issued in direct response to union activity and solicited reports of only prounion activity. Moreover, here there is no evidence that any employee, prounion or otherwise, had engaged in such threats or coercion.

Member Schaumber notes that he disagrees with the analysis applied in *Tawas Industries* and would have found no violation in that case. He would overrule *Tawas* to the extent that it held an employer violates Sec. 8(a)(1) when, in response to reports of threats and coercion of employees, the employer issues a facially neutral prohibition against such conduct and/or requests that employees report such conduct to management and/or the Board. In Member Schaumber's view, the term "coercion," which appears in the statute, is not so inherently ambiguous that employees would reasonably construe it to apply to Sec. 7 activities. He suggests the Board reconcile its divergent precedent in this area and issue clear guidelines for the Board's constituents to follow.

Having found above that *Tawas Industries* is inapposite on these facts, Member Kirsanow finds it unnecessary to comment on the future vitality of that decision.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Journal Register East d/b/a New Haven Register, New Haven, Connecticut, its officers, agents, successors, assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. April 28, 2006

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Peter N. Kirsanow, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Thomas E. Quigley, Esq. and Lindsey E. Kotulski, Esq., for the General Counsel.

Thomas M. Brockett, Esq., of East Hartford, Connecticut, for the Charging Party.

Michael J. Rybicki, Esq., of Chicago, Illinois, for the Respondent Employer.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Hartford, Connecticut, on June 15-17, 2005.¹ The charge in Case 34-CA-11070 was filed by Laborers' International Union of North America, Local Union No. 455, AFL-CIO (hereinafter Union) on January 18, 2005. The charge in Case 34-CA-11085 was filed by the Union on February 1, 2005. An order consolidating cases, consolidated complaint and notice of hearing (herein complaint) issued on April 28, 2005. The complaint, inter alia, alleges that Journal Register East d/b/a New Haven Register (hereinafter Respondent) has engaged in conduct in violation of Section 8(a)(1) and (3) of the National Labor Relations Act (hereinafter Act). The Respondent filed timely answer to the complaint, admitting, inter alia, the jurisdictional allegations of the complaint. The following employees of Respondent are supervisors within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

Kevin Walsh	Publisher/CEO
Tom Muessel	Production Manager
Richard Bolognese	Pressroom Manager
Hope Mezzomo	Mailroom Manager
Ralph Lucibello	Press Electrician Supervisor
Bob Huchison	Pressroom Supervisor ²

¹ All dates are in 2004 unless otherwise noted.

² Huchison retired on July 29, 2004.

Richard Kevorkian Pressroom Supervisor
Neil Davis Mailroom Manager

The complaint alleges that Respondent violated the Act by:

1. on or about August 2, 2004, by Kevin Walsh, asking Respondent's employees to report on the Union activities of other employees;
2. on or about August 18, 2004, issuing a written warning to employee Robert Camposano; and on or about January 7 2005, suspending Camposano.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, engages in the publication of a daily newspaper at its facility in New Haven, Connecticut. During the 12-month period ending March 31, 2005, Respondent has derived gross revenues in excess of \$200,000 and has purchased and received at its New Haven facility goods valued in excess of \$5000 directly from points outside the State of Connecticut. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Camposano's Union Activities*

Respondent prints and distributes a daily newspaper in New Haven, Connecticut. Truckdrivers at the facility have long been represented by the Teamsters, but the approximately 180 press and mailroom employees have evidently never been unionized. In early to mid-2004, a small group of pressroom employees, led by 67-year old Robert Camposano, attempted to bring a union into Respondent's facility. This Union organizing effort by Camposano is alleged to have been the reason he received first a written warning in August and then a 5-day suspension in January 2005.

1. Camposano's employment duties and union activity

Camposano has been employed by Respondent as a night-shift electrician for about 3 years. Throughout his professional career, he has been employed in a variety of positions related to electronics. His work hours are supposed to be 9 p.m. to 4 a.m., however, he can leave earlier if the paper is printed earlier. The daily newspaper is printed during the night shift. In 2004, his supervisor was Ralph Lucibello. Camposano's job duties were primarily related to fixing any electrical problem that occurred with the printing presses. There were no other electricians on the night shift. During parts of 2004, Lucibello, Chris Petolla, and Larry Rogers worked as electricians on the day shift, from 8 a.m. to 3:30 or 4 p.m. In the summer of 2004, Camposano was supervised at one time or another by Bob Huchison, Richard Kevorkian, and Lucibello. As Lucibello did not work nights, he would leave notes giving Camposano job assignments or a note asking him to call. In the material part of

2004, Rick Bolognese was pressroom manager and reported to Production Manager Tom Muessel. These two managers worked some nights until the paper was printed. Otherwise they worked days.

Respondent operates two printing presses on the second floor of Respondent's facility and the pasters are on the first floor. The pasters are machines which paste rolls of newsprint together so a press run need not stop when a roll of paper is depleted. From the testimony in the case, they are fairly prone to breaking. Respondent also has a separate mailroom to which the printed papers are carried by conveyors. Respondent has from 25 to 30 employees working in the pressroom and from 15 to over 100 employees working in the mailroom. These employment levels are dependent on the number of papers that need to be printed on a given day. At all times material to this decision, Camposano was the only electrician working at night.

As noted above, in the summer of 2004, the only employees of Respondent who were unionized were the truckdrivers who were represented by the Teamsters. Camposano testified that beginning in 2004, some of Respondent's employees expressed to him their dissatisfaction with certain of Respondent's management and their desire to unionize and join the Teamsters. According to Camposano, the Teamsters were not interested in organizing any more of Respondent's employees. Camposano knew the business manager for the Laborers' Local Union No. 455 and took it upon himself to tell this individual of the employees' desire to be unionized. The business manager said that the Union would attempt to organize if there was sufficient support. Camposano talked with other employees about the Union and secured signed authorization cards. Camposano first targeted Respondent's full-time permanent employees who numbered about 37. He secured enough signed cards to support a petition which was filed on July 1, 2004. After the filing, Respondent's attorney contacted the Union's attorney and informed him that the number of employees shown in the petition was substantially incorrect as it did not include part-time employees. The Union withdrew the initial petition on July 12.

Camposano then began securing signed cards from part-time employees. A second petition was filed on July 23, this one reflecting that 160 employees would be in the proposed unit. A third petition was filed on August 2 seeking representation of some 35 employees. Elections were held on September 2 as a result of these two petitions and in both elections the Union lost. Camposano was the union observer in the election held as a result of the petition filed August 2. First-shift mechanic Harry Friedlander testified that Camposano was the most visible Union supporter. He added that though Camposano works nights, he came around Respondent's facility on the day shift seeking signatures on authorization cards.

2. Respondent's supervisors' comments to Camposano about his union activities

Prior to the filing of the July 1 petition, about mid-June, Camposano spoke with Supervisor Huchinson. Camposano was outside the Respondent's facility at about 10:30 pm, having a cigarette break with Supervisors Richard Kevorkian, Hope Mezzomo, and Huchinson. Employees Sal Rascatti and George Stranz were also present. According to Camposano,

Huchison said that he did not know if he could say it, but that Respondent knew that the employees were trying to get a union in Respondent's facility. Huchison said that Respondent's CEO would not let a union in and would fight it by every means available. According to Camposano, Huchison added that even if a union did get in, the Respondent would not honor it. Camposano testified that Huchison was looking at him when he made these remarks and told him that he, Huchison, knew Camposano was involved. According to Camposano, he attempted to convey the impression that he was unaware of the organizing attempt.

During this smoke break or another one in the same timeframe, Supervisor Mezzomo called him "Union Bob" and a "troublemaker." Camposano testified that in response, he said, "not me," and the other persons on break would laugh. Camposano testified that Mezzomo said this to him on more than one occasion.

At yet another break, Huchison asked Camposano why the employees were seeking representation by the Laborers' Union.

Both the Respondent and the Union produced literature in support of their respective positions. Camposano would post this literature around Respondent's facility. At some point Supervisor Mezzomo berated Camposano for this activity, noting that she had to stay late each night removing all the literature he had posted that evening. She told Camposano that she knew he was the person doing the posting. Although Camposano testified that Mezzomo was his friend, he further testified that her anger at him on this occasion frightened him.

In late June or early July, Supervisor Davis told Camposano that Respondent knew that Camposano was "the ring leader" and "you're involved." According to Camposano, Davis added, "they're going to get you."

In June, Camposano's Supervisor Lucibello gave him a written evaluation which Camposano testified was good and he signed it. Then a few days later, Lucibello told Camposano that he had been instructed by Production Manager Tom Muessel to redo the evaluation. The redone evaluation dropped Camposano's job performance from good to fair. He did not sign the second evaluation.

Camposano testified that before the evaluation, Lucibello called him "Sponge Bob" and told him "they are out to get you, they're going to get you." Lucibello added that Muessel was out to get him. Lucibello had not called him Sponge Bob in the previous year.

Camposano's testimony about these conversations with supervisors is not disputed and I accept it as fact.

By letter dated July 23, the Union's attorney informed CEO Walsh of the organizing campaign and named employees on the organizing committee. The employees named were Camposano, Ana Diaz-Alvarez, Sal Rascatti, George Stranz, and Alan Martindale.

Shortly after this letter was received by Respondent, Camposano was in the mailroom standing with Rascatti and Stranz when Muessel approached them. According to Camposano, Muessel commented, "is it safe to come near you guys, I hear you guys are the ones going to be blamed for trying to get a union in here or if this place becomes union." Stranz recalled Muessel saying "You guys are going to make a name for me."

Stranz was under the impression that Muessel was talking about the Union. I credit Stranz and Camposano with respect to this testimony.

During at least part of the union campaign, Neil Davis was Stranz' supervisor. Davis asked Stranz, "George, how did you get involved in this union business? You don't seem the type." Stranz replied that he wanted to hear both sides. Stranz did not attend any of the Company-employee meetings and was never asked to participate in one-on-one meetings the Respondent had with other employees. Davis' successor, Hope Mezzomo, spoke with Stranz after the election. In a conversation about the Union evidently initiated by Stranz, she told him that she did not want a union because it would make her job harder.

Camposano testified that in August, Respondent hired outside consultants to run Respondent's campaign against the organizing effort. According to Camposano, he called the consultants "union busters" and it angered them. These consultants held meetings with employees, but Camposano was not invited to attend them. He testified that he walked into one after it had started. According to Camposano, the speaker referred to one of Respondent's executives calling him a wonderful guy and relating that the executive took care of workers in Ohio who voted down a union. The speaker said that the Ohio workers were now better off than they were before they voted. Camposano testified that he got turned off and left. Lead mechanic Harry Friedlander testified he attended some meetings Respondent held during the campaign and that Respondent's position was that it did not want a union.

B. Respondent's CEO Distributes an Antiunion Memorandum to Employees

On August 2, 2004, CEO Walsh distributed to employees a memorandum which reads:

As most of you know, the Laborers' Union is trying to organize our company and become your sole and exclusive bargaining representative, even though it knows nothing about the newspaper business. I want to make the company's position on this matter clear. We do not want or need this union here at the New Haven Register.

There may be a few individuals who, for various reasons, are supporting this union. They could be promoting this union for their own selfish reasons without regard to the negative consequences that I believe could result from unionization for your families.

I am sure that once the truth about this union is known, everyone will see that having a union will simply make things more difficult for all of us. I am also sure that everyone will also recognize this union's promises: for what they are—just empty promises like the ones the politicians often make to get our vote.

Some of you may have been approached to sign union cards or a petition. You have a legal right to refuse to support this union. For those of you who have signed union cards or a petition, you should know that you are not obliged to support or vote for this union.

If you are threatened or coerced by anyone to support this union, please notify your supervisor so proper action

to protect you can be taken. We will handle any such complaints as confidentially as possible.

In the coming weeks, we will give you information about your rights, the union and the election. We encourage everyone to ask questions and get the facts. Only then will you be able to make an informed decision.

Remember . . . the union is a business, and they will say anything to convince you to support them. Before they can start taking your money, they need you to vote for them.

C. The August Written Warning to Camposano

On August 19, Camposano reported for work and Supervisor Kevorkian called him into Pressroom Manager Rick Bolognese's office.³ Fearing he was about to be disciplined, Camposano asked for a witness. Another employee, John Benedetti was called into the office. Bolognese then read a written warning dated August 18, that was being issued to Camposano. It reads:

This is a written warning due to your unacceptable behavior on Friday August 6. You were involved in an altercation with me, your manager. This altercation was a result of me questioning what you were doing, since you were just sitting in a chair on the press floor between the supervisor's office and the conveyor drive panels. You turned a simple question from a manager to an employee into a confrontational situation. Not only were you argumentative, but you also approached me in a confrontational manner. At that point I should have sent you home, but I did not. I returned to my office, and about two (2) minutes, I heard you ranting and raving on the pressroom floor, at which point I instructed you to go home. You asked me the reason, and I stated that you were out of control and you need to leave immediately. At that point you asked if you would be paid for the time, which I told you to just go home.

This behavior will not be tolerated at the New Haven Register. This will serve as a written warning, and any further incidence will result in either suspension or termination of employment at the New Haven Register.

When Bolognese finished reading the warning, Camposano asked if he could challenge the warning. Bolognese said no. Camposano refused to sign the warning. Bolognese admitted knowing that Camposano was an active union supporter.

Bolognese testified that on August 6, following the press run that night, he went to the supervisors' office to speak with Supervisors Rich Kevorkian and Ken Howley. He looked out and saw Camposano come up and take a seat in a chair in the middle of the floor between the control panels and the office. Camposano had a book in his lap. After a while, Bolognese became curious about what Camposano was doing. Bolognese testified that he approached Camposano and asked what he was doing. According to Bolognese, Camposano became irate and asked "Are you paranoid?" He jumped out of the chair and said he

would not sit there if he could not sit there. Bolognese replied that he did not say Camposano could not sit in the chair, he was asking what Camposano was doing. Bolognese told Camposano that he was his manager and had a right to know what he was doing. Bolognese testified that Camposano was yelling at the top of his voice. According to Bolognese, he backed away and Camposano then walked away.

Bolognese went back into the supervisors' office for a few minutes, then decided to see what Camposano was doing. He walked to the electrical shop which served as Camposano's office and entered. He found Camposano and Sal Rascatti. According to Bolognese, he asked Camposano what was going on. Camposano started yelling and told Bolognese that he was "the biggest fucking prick in the place" and then, ". . . come on, we're just pizanos—we can yell at each other and we can talk this way." Bolognese testified that Camposano then came up to him and put his finger in his face. Bolognese testified that he felt threatened and backed away telling Camposano that he better watch himself. Bolognese testified that Camposano was out of control and started to leave. Bolognese testified that Camposano asked him if he was threatening him. Bolognese replied he was not threatening him, and that he needed to calm down. Bolognese then returned to his office. About 5 minutes later, he heard Camposano yelling at the top of his voice and went to see what it was about. According to Bolognese, Camposano was ranting and raving, so Bolognese sent him home. Camposano asked if he were going to be paid for the night. He was paid.

Camposano offered his version of the events of August 6. Upon arriving for work, he read a note from his supervisor telling him that a change had been made to the wiring of the mailroom conveyor system, including one to the alarm system. Although his testimony is confusing on this point, he evidently feared the alarm would go off and he wanted to know how to disconnect it. After the press run that night, he went to the control panel for the alarm, opened it and began reading the manual for the system, sitting in a chair that was close by. This location was less than 20 feet from the supervisors' office. Bolognese was in his supervisors' office at the time. Bolognese saw Camposano, came out and asked what he was doing. Camposano replied that he was trying to see the change that had been made in the alarm system. According to Camposano, Bolognese turned and partially closed the door to the office. Then he opened it and again asked why Camposano was sitting there. Camposano then said he would leave and that he did not want Bolognese to go paranoid on him. He closed the control panel, picked up the manuals and started back to his office, even though he had not yet found the change made to the alarm system.

According to Camposano, Bolognese came out of his office and followed him. Camposano testified that Bolognese was ranting and raving that Camposano had to respect him because he was the pressroom manager. Camposano testified that he was repeatedly saying, "Yes, Rick," all the way to his office. When the two arrived at Camposano's office, Bolognese demanded respect and pointed a finger at him. Camposano said, "Buddy, don't point your finger at me." "What do you want me to do, Rick, talk soft to you . . . you want me to bow down to

³ Bolognese left the New Haven Register in May 2005 to be production manager for another newspaper.

you . . . I'm not going to kiss your ass." Employee Sal Rascatti was in the office and at this point left. Bolognese followed him out and slammed the door shut. Camposano opened the door and went out. Bolognese turned and told him to watch himself and I am going to get you or we are going to get you. Camposano replied "Rick, please don't do that, you're going to make me paranoid." Camposano then walked to the area where Riscatti was working and Bolognese came after him, telling him he is ranting and raving and to go home. Camposano denied this and asked if he would be paid. Bolognese did not reply and Camposano went home. This was the first time Camposano had been sent home from a job.

On cross-examination, Camposano recalled that Muessel called him the next morning. Camposano testified that Muessel was very nice and told him that he and Bolognese had to work out their problem. Camposano testified that he told Muessel that he would treat Bolognese with respect. He also testified that Muessel ended the conversation by saying, "I'll be glad when this union shit is over, because it's putting stress on everybody."

Employee Sal Rascatti testified that he was walking toward Camposano's office when Camposano joined him and started telling him about an argument he had had with Bolognese. The two men entered the office and were soon joined by Bolognese. Bolognese was demanding respect and Camposano got angry, and walked up to Bolognese. According to Rascatti, both men were pointing fingers at the other. Camposano told Bolognese that if he were going to fire him, fire him. Bolognese replied that he was not there to fire Camposano, but to get some respect. At this point Rascatti left the office. He was joined in a while by Camposano and then Bolognese came up. Camposano and Bolognese got into another argument, and Bolognese sent Camposano home. Rascatti testified that he did not see Camposano rant and rave. I credit Rascatti's testimony in this regard.

With respect to the August 6 incident, Bolognese was asked by Muessel to document the incident with statements from witnesses as harsher discipline was being contemplated. The matter was taken all the way to CEO Walsh. The only statement taken was from Supervisor Kevorkian some 6 months after the event. Kevorkian's statement in pertinent part reads:

On the morning of August 6th 2004 Rick Bolognese, Ken Howley and myself were sitting in the supervisors' office discussing pressroom issues, when we observed Bob Camposano sitting directly outside of the office with a note book in his hands. Rick asked both myself and Ken what he was doing out there. Neither one of us knew, so Rick opened the door and simply asked him what he was doing. Which was completely his right to do so seeing that Rick is the pressroom manager and the electricians fall under his supervision. Immediately Bob's response to Rick was "what are you paranoid?" in a sarcastic manner. Rick's response was, I am the manager of this department and I have the right to ask my employees what they are doing. Rick simply asked a question and in my opinion as a pressroom supervisor Bob's response was both disrespectful and uncalled for. A clear cut example of insubordination by an employee and his department head.

All Bob needed to do is answer the question presented him and it would have the end there."

Nothing in Kevorkian's memo speaks to Camposano ranting and raving. As will be discussed at more length in the conclusions section of this decision, Bolognese was prone to exaggerate and either change his testimony from time-to-time or add in his testimony details adverse to Camposano that do not appear in any documentation generated at the time of the August incident. Because of this tendency on the part of Bolognese, I find that Camposano's testimony, corroborated in part by Kevorkian and Rascatti, is the more credible. Thus to the extent that Bolognese's testimony conflicts with that of Camposano, I credit Camposano's version.

The record also reveals that other employees whose behavior borders on insubordination are not given written warnings. On September 9, 2004, Production Manager Muessel prepared and placed in employee George Stranz' file a note. It reads:

I sent George Stranz home at 12:30 am for insubordination. He told me that he 'didn't [want] anyone else busting his balls', after I said 1 word to him, which was 'infeed.' After he said that he went off to his corner of the machine. I went over to him and said, 'I'll give in to the fact that maybe you are frustrated tonight, but if you ever speak to me like that again, I'll fire you.' Then he started to blame the people we hire for his problems/frustrations, including the guy he got into a fight with. I told him I saved his ass from being fired then, and I touched his leg, when he looked at me with Charles Manson eyes and said, "don't ever touch me again." I told him to go home."

Stranz remembered the events of September 9 essentially as related in the note, except he did not remember the touching part. He was sent home, but was paid for the entire night. As he was changing to leave that evening, Muessel again approached him and told Stranz that he was to come to Muessel's office the following day. Stranz snapped back saying, "I don't come in here on my own time." Muessel reiterated his request and Stranz left the facility. Stranz went in early the next day and met with Muessel. According to Stranz, the two men apologized and then Muessel said, "Look, George, I know we've all been under stress with this union thing, but, it's over now. We have got to [sic] this behind us and move on." Stranz agreed and the meeting ended. Stranz was unaware that a note of this incident was in his personnel file.

D. The January 7, 2005 Suspension of Camposano

1. The written suspension memorandum

Camposano received another discipline in January 2005. The written 5-day suspension dated January 6, 2005, reads as follows:

The purpose of this letter is to formally address your performance and execution of duties as an electrician of the New Haven Register, which is unacceptable.

On Thursday (12/23) we had reelstand #6 go hard down due to an electrical problem. As per my instruction,

Harry Friedlander⁴ called you and stated that the motor was not working and needed to be changed, and if you could come in since we needed the repairs completed before that night's run. You told Harry that you could not come in now but would come in earlier than your scheduled shift and make the repairs before press start.

That night I received a call @ 12:30 am from the Press Supervisor stating that we were only producing papers off one press because "A" press was hard down due to #6 reelstand being out of service. At this time you did not even have the motor changed, and your scheduled shift start was at 9:00 pm. By the time the new motor was in place and the reelstand supposedly back in service it was too late to run the press. We lost a night of production on "A" press.

The last time I spoke with you that night was at approximately 2:00 am, and was told that the reelstand has been tested and was electrically operational, but was leaking fluid and the machinists would have to fix in the morning. The first thing Friday morning the machinists checked on the leak and immediately discovered that reelstand #6 was rotating in the opposite direction. Harry had to swap the electrical connection to make it work properly, which cost us valuable production time.

You did not demonstrate any urgency in getting the job done, even when you were told we needed to have this reelstand up and running. Also, you did not verify that once the repair was completed that the reelstand was operating correctly, by checking for proper rotation. Your actions for this one problem twice jeopardized production.

During our follow-up conversation on 12/28 about this incident, you verified you [sic] no sense of urgency or on time production attitude when you stated that you figured it was only a fuse and there was no need to come in early, you would take care of it when you came in for your normal shift. Also, during this conversation you stated that you turn your beeper off as soon as you leave work, at that point you were relieved of your beeper.

On Tuesday night (01/04)⁵ we were running reelstand #5 and had a paster go off the core.⁶ You checked the unit and found a blown fuse on that unit, which you replaced. I went back downstairs when the next paster on 5 was getting somewhat close to going into cycle and you were not there to monitor. The reel did not go into position and would have gone off the core, losing valuable production time, if the press was not stopped. I had to find where you

were in order to let you know that the problem still exists and question why you were not monitoring the reel. I found you sitting in the machine shop, at which point I told you we had another problem with the reel and questioned why you were not there watching it. I also said that I have spoken to you before about doing your job, which means being there to monitor and troubleshoot when we are having a problem. You had no answer, and just stated that I was right and you should have been there.

You discovered that this paster on #5 did not go into cycle because when you were troubleshooting the previous paster you removed a relay and did not put it back into place, it was laying on the bottom of the cabinet.

You are not meeting the expectations of your position, and it cannot continue. This job demands a sense of urgency, commitment and the understanding that we are production facility that has a daily obligation to our customers.

This letter is to notify you that due to your unacceptable performance you have been suspended for five (5) days without pay. Lack of improvement will result in additional discipline up to and including discharge. I do not take this step lightly, but you have left me no other option.

Upon arriving for work on January 7, 2005, Camposano was summoned to Bolognese's office where he was given the suspension. Camposano read it and said he disagreed with it. He refused to sign it.

2. The events of December 23-24

Camposano offered his version of the events covered by the suspension. He testified that on December 23, he arrived at work at 8:20 p.m., some 40 minutes early. He testified that he had been called at home about 2 or 3 p.m. by day-shift group leader, Harry Friedlander, who related that there was brake chattering on reelstand 6.⁷ Friedlander asked Camposano to come in early and Camposano replied he would come in as early as he could. He also told Friedlander that the problem sounded like a blown fuse which would be easy to fix. Camposano testified that Friedlander did not tell him the problem was urgent or that "A" press was inoperative. He denied that Friedlander indicated in this call that the motor for reelstand 6 had to be replaced. Based upon all of the record evidence, I believe this to be true. The written memorandum suspending Camposano asserts that Camposano was told by Friedlander to change the motor when he came in. This is patently false. If this was the case, the motor would have been changed on the day shift.

For someone, such as me, who has no experience with the printing of a newspaper, the terms used can be confusing. The following two paragraphs are intended to set out some basic facts needed to understand what Camposano was about on the night in question. As noted earlier, Respondent has a 2-story facility. On the second floor are the paper's two Goss Metro-

⁴ Friedlander is the first-shift lead mechanic. It was stipulated that he is not a supervisor within the meaning of the Act. Friedlander testified that he told Bolognese about the problem in the afternoon of December 23. He described the problem to Bolognese saying that reel 6 was making a chattering noise and seemed like an electrical problem. Friedlander testified that Bolognese told him to call Camposano and to have him come in early. He called Camposano and asked him to come in early. He testified that Camposano said he would be in later that day. Friedlander did not specify a time for Camposano to come in.

⁵ The letter obviously is in error and the correct year is 2005.

⁶ Camposano testified that going off the core means the paster ran out of paper. He denied that this occurred on the night in question.

⁷ Camposano testified about his normal work and rest routine. He usually leaves work at 4 a.m., goes to a coffee shop and then gets home about 5 a.m. He then goes to bed. After he awakens he goes about his business, then takes a nap for about 2 hours at some point between 3 and 5 p.m. He then reports for work before 9 p.m.

liner press, called press "A" and press "B." Each press has its own crew. The New Haven Register is published daily and printed at night. The reelstands which contain the rolls of blank paper on which the paper is printed are situated on the first floor. When the papers are printed they are moved from the presses by a conveyor to the mailroom. There advertising inserts are mechanically placed in the papers. During the day shift, jackets for the inserts are printed. Also parts of the Sunday paper are printed on day shift during the week preceding the Sunday edition. Items printed during the day are not time sensitive as is the nightly press run.

Feeding rolls of blank paper into position to feed to the presses is an apparatus called a "spider." The spider feeds the rolls of paper to the paster. Each reelstand has a paster, which is a mechanical device that pastes the end of one paper roll to a new roll so that production is continuous and each roll does not have to be separately guided through the spider. What is called a "web break" occurs when the continuous feed of paper is ripped apart. When this happens the presses automatically stop. Depending on where the break occurred, the process to reweb the paper from the rolls to the presses upstairs can be difficult or easy. A common cause of a web brake is when the paster fails to paste. When one reel is not working, it is possible to bypass the malfunctioning reel. Though this bypass is possible and has been accomplished at the Respondent's facility, there are times when the effort fails. Such an effort failed on the night in question.

When Camposano arrived for work that evening, he went to the paster area for press "A." He testified that no one was at work at this time and he had to turn on the lights.⁸ Press "A" has seven pasters, though one is totally inoperative and is used for spare parts. He checked reelstand 6 and found that the brake was chattering. The brake has to be fully operational for the paster to function. It is part of the motor which runs the paster. After getting his equipment he began trying to find the problem. He determined that it was not a blown fuse and decided the problem was with the brake. By the time he made this determination, it was after 9 p.m. and the night-shift employees were coming in to work. He decided he needed a mechanic to assist him and went to find George Stranz, the mailroom mechanic.⁹ The night-shift mechanic for the pressroom was on vacation that evening. He found Stranz and the two went back to reelstand 6.

Camposano showed Stranz the problem and Stranz agreed with him that the problem was with the brake. They began trying to take the brake off the motor, a job neither man had done before. When they got the brake off, fixing the problem looked more complex than they had thought. Camposano at this point called Friedlander and gave the phone to Stranz.¹⁰ Either Friedlander or Stranz or both decided that the entire

motor would have to be replaced.¹¹ Friedlander advised them to be careful because oil in the motor had to be drained first or a real mess would occur when the motor was removed.

The two men removed the motor over an hour and a half period of time and found a hole for a pin and believed the missing pin was the cause of the problem. Stranz found a replacement pin and they put the motor back in place, only to find that the problem with the chattering brake still existed. They had to replace the motor oil they had drained when they removed the motor. This proved to be time consuming. By this time it was after 11 p.m. The press crew had already started printing on press "B." Another crew was working trying to bypass reelstand 6 so that press "A" could function. They were not successful and the only papers printed on press "A" that night were from the roll of paper already on the press.¹² Camposano and Stranz at this point decided to replace the motor. Camposano went to see if he could find a replacement. He found one and they began the replacement process beginning at 11:30 to 11:45 p.m. They finished around 2 a.m.¹³

Camposano testified that Bolognese called twice that evening. The first was while they were replacing the motor and the second was when they had finished. He characterized both calls as brief and testified that Bolognese was not upset in either call. Bolognese testified that he talked with Camposano once that evening, at about 2 a.m.¹⁴ When the job was completed, Camposano and Stranz noticed that the motor had a small oil leak. Camposano testified that he did test the replacement motor and it was working. He did not know or realize when he tested it that it was running in the wrong direction.¹⁵ Neither did Stranz. Friedlander testified that when the press is started, a member of the press crew is supposed to watch the reelstands and cut off the machinery if there is a problem. But he also testified that some people on the press crew itself might not know the machinery was running in reverse until something went wrong.

After finishing the replacement, Camposano went home. He was awakened about 8:30 a.m. by a call from Friedlander. Friedlander told him the leak had been fixed but that the motor was running in the wrong direction. According to Camposano,

¹¹ At one point in his testimony, Camposano stated in regard to a call to Friedlander, "Oh, Harry gave me advice that, I guess I did talk to Harry now first, because I says we decided we're going to change the whole motor. (Tr. 76.) This would have been at about 9:45 p.m.

¹² Press records reflect that press "B" ran 61,612 papers for distribution and press "A" ran 8,625 papers. The total number of papers that Respondent wanted printed that night were printed in time to be distributed normally. Optimally, both presses would be used at night, each printing about half of the number of papers needed. At some point in the evening, press "A" had a water problem. I do not think it is clear in the record whether this caused the press to shut down. This problem was unrelated to the one being addressed by Camposano and Stranz.

¹³ Stranz testified that a press run that ends before 3:30 a.m. is a good run.

¹⁴ Bolognese testified that he asked why the job had taken so long and Camposano told him that it was a big job. He added that Camposano told him that the motor was fixed and tested, but was leaking fluid.

¹⁵ The pasters are not intended to run in reverse and to do so might cause an immediate web break and perhaps damage the machinery.

⁸ Bolognese also testified that there was no one at the facility between 8 and 9 p.m. Even if Camposano had reported earlier, it would have saved little time as he would have needed help to fix the problem.

⁹ There is no question about the job involved requiring two persons because of the size and weight of the motor involved.

¹⁰ Camposano's phone records show two calls to Friedlander that evening, one at 9:23 p.m. and the other at 9:45 p.m. The first lasted 4 minutes and the second 3 minutes.

he offered to get dressed and come to the facility. Friedlander said he would make the correction if Camposano could tell him what to do. The repair simply called for two of three wires to be reversed. Friedlander completed the repair in 10 or 15 minutes. When he finished he reported that the reel was fixed to Bolognese. Friedlander testified that Bolognese did not seem upset. That evening, Camposano reported for work and nothing was said about the previous night's problems. There was no lost production time on press "A" during the day on December 24.

3. Camposano's meeting with Bolognese and Muessel about the December event

On the night of December 28, Camposano was called to Bolognese's office. Awaiting him there were Bolognese and Muessel. According to Camposano, Bolognese began the meeting by telling him he did not like Camposano's attitude about the problem with reelstand 6 and that Camposano's performance on the night of December 23–24 was bad. With respect to the matter of attitude, the managers were displeased with Camposano's lack of a sense of urgency in solving the problem that evening. Camposano told them that he and Stranz worked their butts off. The managers reiterated their concern about his attitude. Camposano then complained that when they hired back another electrician who had previously quit the Register, they paid him \$2 more an hour than they were paying Camposano. He also complained that Respondent had sent this employee to school to learn about new equipment being installed and they had not sent Camposano. He then complained about what he believed the case with the beeper he carried. He told management that other employees get paid to carry a beeper, but that he was not being so paid. He volunteered that he turned the beeper off as soon as he left work. Muessel then took away Camposano's beeper. The meeting ended soon after this. He was not disciplined in this meeting. Camposano denied that at this meeting, the matter of the motor running backwards was raised.

Bolognese testified that at this meeting, he asked Camposano why the job had taken so long and why Camposano had not come in earlier.¹⁶ According to Bolognese, Camposano told him that he had believed the problem was only a blown fuse and could be fixed quickly. He added that if he had come in earlier, there would have been no one to help him until the start of the shift at 9 p.m. Bolognese testified that there was a late crew on Thursday nights and there would have been someone to help. Bolognese then asked why the motor was not just changed out immediately. Camposano told him that he had to troubleshoot the problem and that it was a time-consuming job.

Bolognese testified that Camposano complained about not being paid for carrying a beeper, noting that he only used it in Respondent's facility and it was turned off at all other times. Bolognese told him that was not the intended use for the beeper and the beeper was taken away from Camposano.

¹⁶ On cross, Bolognese testified that he was not really upset about the time it took to make repairs to reelstand 6, he was upset that Camposano did not leave the stand operational when he left.

Upon prompting from Respondent's counsel, Bolognese remembered the matter of Camposano's incorrect wiring of the motor came up, but could not remember what was said.

4. The January 4, 2005 event involving reelstand 5

On January 4, 2005, when Camposano reported to work, Bolognese informed him that the paster on reelstand 5 was not working. Camposano checked into the problem and found a fuse that could be the problem. However it appeared to be good to Camposano. He testified that Bolognese was standing next to him and told him that he had checked the fuse and it was good. Camposano then went to get his tools so he could troubleshoot the problem. After working at it for a while he came back to the fuse, checked it with his equipment, and found that it was defective. He reported what he had found to Bolognese. Then Camposano got a replacement fuse and installed it. He turned the machine on and it ran. He left the machine at this point and went to his office. He testified that he intended to return in a 20 or 30 minutes when the machine would have to perform its function as a paster. He testified that a press operator is on duty to make sure the pasters are working. About 10 minutes after the repair had been made, Bolognese came in and asked where he had been. Bolognese said reelstand 5 was not working and had been stopped. Bolognese told him he should have stayed with the machine until he was sure it was working properly. Camposano testified he agreed with Bolognese to avoid a conflict. Bolognese told him that he was not doing his job, that he should have stayed with the machine until it performed the paster operation.

Camposano went to the paster and opened the control panel. He found a necessary relay lying at the bottom of the panel instead of being installed. He put it in its proper place and the paster was operational. He showed Bolognese the problem and according to Camposano, Bolognese left without saying anything. Camposano testified that the press run was successful that evening. Camposano had no explanation as to why the relay had been removed, implying that he had not removed it. At a later point in his testimony, Camposano denied removing the relay. About 2 hours later he went by Bolognese and told him the paster was working correctly. According to Camposano, Bolognese said, "good."

According to Bolognese, after Camposano completed the initial repair, he returned to his office. When it was close to the time for the paster to go into action he went back to see if it worked properly. Camposano was not there. The paster did not go into cycle and Bolognese stopped the press. He left to find Camposano and found him in the machine shop. He told Camposano that he had told him before that when a repair is made to wait to make sure the machine does work and the repair had been correctly made. Camposano agreed. Bolognese waited and watched as Camposano discovered the relay which had been unplugged. Bolognese testified that he had seen Camposano pull out relays while finding the bad fuse. He assumed that this unplugged relay was one that Camposano had removed but did not remember him unplugging the particular relay. When the relay was plugged in the problem was solved.

In internal emails written by Bolognese about the suspension of Camposano, the January 4 incident is not mentioned.

5. The January 5, 2005 meeting where Camposano embarrasses management

On January 5, 2005, Bolognese held a meeting with the night-shift press employees. He asked the employees whether they wanted the night shift to begin at 9 or 9:30 p.m. He asked for a showing of hands and all but three employees, including Camposano, voted for the later start time. Bolognese announced that the new start time would be 9:30 p.m. The three displeased employees argued with the others pointing out the merits of starting earlier. One of employees who had voted with the majority asked for another vote. Bolognese said no. Camposano then said that it has been 6 months since the union activities and 4 months since the elections. He continued that during the time before the elections, the employees were telling Camposano that the Respondent's consultants had made promises to the employees and nothing had happened yet. He pointed out that nothing had changed with Respondent's sick day policy. According to Camposano, Bolognese said he did not know why there were no changes and that he thought some had been made. Camposano testified that Bolognese asked him if the employees had gotten nothing, and Camposano replied that that was correct. The meeting ended.

Camposano testified that he was told that CEO Walsh came to other employees and told them that he did not make any promises and the consultants had no authorization to make promises.

6. Camposano's "Rebuttal" letter to the suspension

Two nights later, he received the suspension and was sent home. On his way out, he gave George Stranz a sandwich he had bought for him and was telling him about work problems that Stranz would have to deal with. Bolognese came up and told him to leave and he did. He then wrote up a "rebuttal" to the letter suspending him and delivered it to Bob Lee, Respondent's head of personnel. Camposano asked that Lee give copies to Walsh, Muessel, and Bolognese.

The rebuttal is addressed to Bolognese and reads:

The purpose of this letter is to inform you of my performance as an electrical technician at the New Haven Register.

On Thursday (12/23) Harry Friedlander called me at home and did not state motor was not working, and needed to be changed. Harry stated that the brake was making a chattering sound. He said, "if I wanted to come in early, get overtime, start working on reel #6. I said I would get in as early as I can. My sleep schedule is from 4 pm to approximately 7 pm. I was only able to go in one-half hour early. Any earlier I would be in the pressroom alone working on 480 volt control on a oil slick floor. OSHA says noooo.

That night was a good run, B press handled the load. Run finished at 2 am. The problem wasn't changing a motor. The problem was an intermittent problem. Your letter makes it sound like a hand held motor. At no time do you mention the mechanical aspect of changing the motor. Electrically, it involved only six wires to disconnect and re-connect: there was also a mechanic involved in this

"MOTOR CHANGING". You and Tom never consulted with him.

Friday morning the machinist (Harry) called me around 9 am and told me about the wrong direction. I offered to come in. It only involved reversing two out of three wires. Harry stated he had to change the gasket to the gear box, that he could swap the wires. I told what had to be done, and that the main disconnect beside the paster disconnect was located in the drive control panel for #6. By the way, no one showed or told me that. I found that out the hard way.

Follow up conversation:

Yes I turn off beeper which was understood by Ralph (my supervisor) and the previous production and mailroom managers. New Haven Register's personnel get extra pay for having a beeper. By taking my beeper, increased my response time within the register.

Tuesday night (01/05) my time of reel expiring was off. Also involved in monitoring of reel #5 was a mechanic and operator.

At no time troubleshooting previous paster #6 involved swapping relays from #5. Reel #4 is spare parts reel. The relay that was removed had to do with paster speed. (the problem with #5) My guess is that yourself or someone on first shift did. N.H.R. Personnel are noted for going in electrical panels. I have brought this to your attention, Tom's and mailroom management. It will be stopped someday when someone gets hurt or killed.

I feel my performance at the New Haven Register is exceptional only being with the register for two and one-half years. I have received minimal training, on old and new equipment. I have been working alone for the past six months, with no one to consult my electrical and electronic problems with. I have been doing, trying to do electrical problems that have normally been done on the first shift. My reviews from my supervisor, Ralph Lucibello have been favorable except for the last one, which Tom made him change. (not union related)

Camposano testified that he had not been trained to change a motor like the one he changed on December 23 and 24.

6. The disparate treatment of Camposano vs. other employees

Harry Friedlander testified that he was surprised about Camposano's suspension and asked Bolognese about it a day or two after it took place. According to Friedlander, Bolognese told him that it had something to do with the incident of December 23 and 24, but would not elaborate. As Camposano was leaving the facility to begin his suspension, Stranz asked Bolognese if the suspension was about the events of December 23 and 24. According to Stranz, Bolognese said it was, but there were other things as well. Bolognese then told Stranz he could not discuss it.

Dell Varney is vice president of production for the newspaper, the Columbus (Ohio) Dispatch. He was shown to have extensive knowledge of every phase of the production of a newspaper. He testified that if a reelstand is down because a

brake motor is down, the problem should be checked out and if the problem can be found relatively quickly, it should be fixed. If the source of the problem cannot be found, the motor should be changed. Varney testified that it is theoretically possible to bypass a downed reelstand, but it is not always simple to accomplish. Indeed on the night in question, the press crew on press “A” tried to bypass reelstand #6 unsuccessfully. Friedlander testified that it has been done on occasion at the New Haven Register. Varney testified that if an electrician working for him had incorrectly wired a reelstand motor as Camposano did, the electrician would be suspended. Except for Camposano, that is evidently not the case at the New Haven Register.

Respondent’s printed performance warning form reflect a progressive discipline system with the steps being verbal warning, written warning, final warning, suspension, and discharge. Bolognese testified that in the vast majority of cases, discipline is issued quickly in order to correct the problem. For example, documentation in the record reflects that three employees were disciplined on April 5, 2004 for an infraction occurring April 3, 2004. Another employee received a written warning on March 16, 2004 for conduct on March 11, 2004. Another employee was issued a verbal warning on March 19 for conduct on March 19.

Bolognese claimed to have spoken to Camposano many times and maintained files on all of his activities and problem he was having with Camposano, but the only written memoranda of problems with Camposano are the August written warning and the January 2005 suspension. All discipline given to Camposano postdate his union activity.

With respect to the incident on December 23, Stranz testified that Bolognese never talked with him about it. There is nothing in the Respondent’s document to indicate that Bolognese interviewed Stranz, or Friedlander, or Rascatti about the incident. The only internal e-mails between management relating to discipline are ones relating to incidents involving Camposano.

Mussel testified that he played a role in deciding to give Camposano a 5-day suspension. His explanation for this decision was: “We have an obligation to produce a daily newspaper every day. We take that obligation obviously seriously. The problem that we had in this particular case was that while we use two presses every night except one generally to produce that newspaper not having one operation and facing the fact of a failure on a second one would basically put us without a newspaper on the street which is just absolutely an unacceptable consequence.” His counsel then prompted him with a question about whether the fact that Camposano had not checked his work, and Muessel responded, “Well we certainly expect our employees to verify and check the work that they do for accuracy and in this particular case it was something that was not done well.

He testified that Stranz was not disciplined because the problem of December 23 and 24 was electrical and Stranz was simply helping the electrician.

The record reflects that a number of employees engaged in conduct which cost production or lost revenues, but did not result in suspensions. The only other suspensions involved two employees who engaged in a fight. These examples are set out in the conclusions section of this decision.

D. Findings and Conclusions with Respect to the Alleged Violations of the Act

1. The Walsh memorandum violated Section 8(a)(1) of the Act

As noted above, on about August 2, 2004, in the midst of a contested union campaign, Respondent posted at its facility a 1-page memorandum from its top official, publisher Walsh. The following portion of this memo violates Section 8(a)(1) of the Act, as the language highlighted has the dual effect of encouraging employees to report to Respondent the identity of union card solicitors and of discouraging card solicitors in their protected organizational activities. *W. F. Hall Printing Co.*, 250 NLRB 803 (1980). The offending language is highlighted below:

Some of you may have been approached to sign union cards or a petition. You have a legal right to refuse to support this union. For those of you who have signed union cards or a petition, you should know that you are not obliged to support or vote for this union.

If you are threatened or coerced by anyone to support this union, please notify your supervisor so proper action to protect you can be taken. We will handle any such complaints as confidentially as possible.

The highlighted language violates Section 8(a)(1) for several reasons. First, it is well established Board law that employer notices alerting employees to union “coercion” in the context of organizing campaigns are suspect. In *CMI-Dearborn, Inc.*, 327 NLRB 771, 775–776 (1999), the Board upheld the judge’s analysis of the following employer statement (emphasis in the original):

CMI will protect you from any threats, coercion or scare tactics used by the union pushers to get you to join the union.

If anyone tries these tactics on you, we urge you to report it to me or any other member of Management *immediately*. We will protect your right to be left alone.

Citing *W. F. Hall Printing*, supra, the judge reasoned that “[a]lthough requests to employees to report *only threats* may not constitute a violation of the Act, Respondent’s request to its employees included every contact that the employee might subjectively regard as ‘scare tactics’ or ‘coercion.’” *Id.* at 776 (emphasis added). The Board upheld the finding of a violation of Section 8(a)(1), as the employer’s conduct in that case amounted to a request that employees report to management contacts that include lawful organizational campaign activities.

In *Tawas Industries*, 336 NLRB 318 (2001), another “threats and coercion” case, the Board extended this reasoning to an employer notice related to a union affiliation vote. In *Tawas*, the employer posted a notice on a bulletin board that stated:

It has been reported that employees feel they are being subjected to threats and coercion because they are expressing their views (either pro or con) regarding the affiliation.

If you feel that you are being subjected to such actions, please report such incidents to the Company and we will take the appropriate action, or you may directly contact the Regional office [of the NLRB].

The Board carefully analyzed the above-quoted statement, and found that it violated Section 8(a)(1), noting that although “the notice speaks of ‘threats and coercion,’ rather than ‘pressure,’ ‘harassment,’ or other more general conduct, the Board has found unlawful an employer’s request to employees to report ‘coercion’ in the context of union activity.” *Id.* at 322, citing *CMI-Dearborn*, *supra*. The Board observed that because the notice in *Tawas* alluded to “subjectively offensive conduct” occurring in the context of union activity, it “was likely to encourage employees to report protected conduct to management.” *Id.*

Second, the *Tawas* Board buttressed its finding by noting that: “By singling out purported threats and coercion arising only from such conduct, rather than threats and coercion generally, the Respondent made it clear that it was interested only in finding out and taking ‘appropriate action’ against employees who exercised their rights under the Act.” 336 NLRB at 323. See also, *Bloomington-Normal Seating Co.*, 339 NLRB 191, 193 (2003) (finding unlawful an employer speech telling employees feeling “threatened or harassed about signing a union card” to report such conduct to management, where the employer made the statement in the context of an antiunion message and only targeted “harassment” involving the protected activity of soliciting union authorization cards); *Niblock Excavating, Inc.*, 337 NLRB 53, 61 (2001) (finding unlawful an employer letter to employees urging them to report feeling “threatened or harassed” to sign a union card, noting lack of any credible evidence that any union supporters “employed any unprotected tactics in soliciting support for the Union”). In the instant case, Respondent singled out only prounion “threats or coercion,” and there is no evidence or claim that Camposano or any other union supporter engaged in any unprotected conduct in soliciting union support.

Finally it appears undisputed that a notice such as the Walsh memo had never been previously posted by Respondent. Further support for the finding of a violation is seen by the fact that Respondent’s notice appears to have been created strictly for the Union’s campaign of 2004, a factor noted by the Board in *Lutheran Heritage Village-Livonia*, 343 NLRB No. 75 (2004). In that case, the Board analyzed a range of employer workrules, including a rule prohibiting “harassment.” In finding that the employer rule prohibiting general harassment did not violate Section 8(a)(1), the Board majority specifically noted that there “is no evidence that the challenged rules have been applied to protected activity or that the Respondent adopted the rules in response to protected activity.” *Id.*, slip op. at 2. Here, by contrast, it is undisputed that Respondent adopted or promulgated the “rule” in direct response to union activity. Moreover, as in the cases cited above, the Board noted in *Lutheran Heritage Village-Livonia*, that it was “clear that the rule is not targeted at union supporters, but rather directed to all employees, regardless of their position on the issue of unionization.” *Id.*, slip op. at 3 (emphasis added).

2. Respondent violated Section 8(a)(3) by warning Camposano on August 19, 2004, and suspending him on January 2, 2005

a. Applicable law

The Board held in *Wright Line*, 251 NLRB 1083 (1980), that once the General Counsel makes a prima facie showing that protected conduct was the motivating factor in the employer’s action against an employee, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected conduct. The employer cannot carry this burden merely by showing that it also had a legitimate reason for the action, but must “persuade” that the action would have taken place absent the protected activity “by a preponderance of the evidence.” *Dentech Corp.*, 294 NLRB 924, 956 (1989). A violation may be found when the employer fails to satisfy its burden of persuasion. *Id.* The *Wright Line* analysis also applies where the employer’s purported reasons for the action are pretextual in nature. *Jefferson Electric Co.*, 271 NLRB 1089 (1984).

The fundamental *Wright Line* inquiry is one of motivation, the state of mind of the employer’s decisionmaker. Illegal motive has been found supportable by a number of factors which make up the General Counsel’s prima facie case, such as employer knowledge of the employees’ union activity, timing of the union activity in relation to the adverse action, and anti-union animus. Once the prima facie showing is made, the employer may rebut the prima facie case by persuading that it would have still disciplined the employee even absent his union activity. If the Board rejects the employer’s reasons as pretextual, a violation of the Act may be found. Thus a finding that the employer’s given reason for the discipline are pretextual leaves intact the discriminatory motive established by the General Counsel.

Illegal motive has been held supportable by a number of factors other than employer knowledge, animus and timing, such as disparity of treatment, evidence indicating that the employee engaged in no misconduct, the failure to adequately investigate the circumstances surrounding the discipline, the failure to allow the employee to explain the accusations against him, and where the employer offers shifting and contradictory reasons for the discipline. All these factors are present in the instant case, as described more fully below.

b. The written warning of August 2004

Given the strong evidence of Camposano’s union activity, Respondent’s conceded knowledge of same, its antiunion animus (demonstrated by the Walsh memo and by the numerous un rebutted statements by supervisors to Camposano reflecting animus), the timing of the warning (coming just 2 weeks before the Union election) and documented instances evincing disparate treatment contained in the record, I find that counsel for General Counsel has presented a strong prima facie case of unlawful discrimination within the meaning of the Act. The burden then shifts to Respondent to persuade by a preponderance of the evidence that it would have taken the same action absent Camposano’s protected activities. Respondent has failed to meet this burden.

First, I have found that Bolognese's version of their August 6, 2004 confrontation is less credible than Camposano's. It is implausible that in the midst of a hotly contested union campaign, Camposano, who was well aware that he was viewed as the chief union activist and the possible target of retaliation (based on the numerous statements from supervisors that Respondent was out to get him) would park himself down on a chair in the middle of a room directly next to the supervisor's office, where all three supervisors were meeting, and then openly defy Bolognese by "just sitting there" for 5 minutes, doing nothing. I credit Camposano's explanation that he was reading a manual to understand some electrical changes made earlier the day before.

I believe what transpired is that Bolognese questioned Camposano and received a response he did not like ("don't get paranoid), causing Bolognese to lose his temper. Camposano's response, though less desirable than a straight answer, did not amount to insubordinate conduct sufficient to justify being sent home and receiving a written warning. The rest of the confrontation was caused by Bolognese continuing to push the issue. I also believe that Bolognese began the confrontation without any reason other than a desire to harass Camposano. At the time of the incident, the paper had been printed and there was no showing that Camposano had any assigned task to accomplish.

A memo drafted some 6 months later by Supervisor Richard Kevorkian, who observed the confrontation at its outset, fails to corroborate Bolognese's version in significant aspects. In the memo, Kevorkian wrote:

On the morning of August 6th 2004 Rick Bolognese, Ken Howley and myself were sitting in the supervisor's office discussing pressroom issues, when we observed Bob Camposano sitting directly outside of the office with a note book in his hands. Rick asked both myself and Ken what he was doing out there. Neither one of us knew, so Rick opened the door and simply asked him what he was doing. Which was completely his right to do so seeing that Rick is the pressroom manager and the electricians fall under his supervision. Immediately Bob's response to Rick was "what are you paranoid?" in a sarcastic manner. Rick's response was, I am the manager of this department and I have the right to ask my employees what they are doing. Rick simply asked a question and in my opinion as a pressroom supervisor Bob's response was both disrespectful and uncalled for. A clear cut example of insubordination by an employee and his department head. All Bob needed to do is answer the question presented him and it would have the end there.

Bolognese's testimony conflicted in critical areas with both his written memorandum on the night in question and with the above-cited portion of Kevorkian's memo for the following reasons.

First, in the August 18 warning, Bolognese informed Camposano that:

You turned a simple question from a manager to an employee into a confrontational situation. Not only were you argumentative, but you also approached me in a confrontational manner. At that point I should have sent you home, but I did not.

I returned to my office and in about two minutes, I heard you ranting and raving on the pressroom floor, at which point I instructed you to go home.

But Bolognese's testimony was not consistent with his memo, even though the document was in front of him when he testified. Rather, he testified that when he first asked Camposano what he was doing, Camposano "just went into a tirade and walked off." Nowhere in his memo does he accuse Camposano of going into a "tirade" when they first spoke. Rather, Bolognese wrote that when he first approached Camposano, he (Camposano) was "argumentative" and "confrontational," two highly subjective terms. If Camposano had truly launched into a "tirade" at that point, it is highly doubtful that the incident would have been allowed to escalate, as, given his demeanor at trial, it is probable that Bolognese would have dealt with the matter on the spot—given that two fellow supervisors were within earshot. Nothing in Kevorkian's memo speaks of a "tirade" outside the supervisor's office.

Second, it became clear at hearing that Bolognese added several negative details in an e-mail he sent to his superior Muesel, in this time period, claiming that he supposedly felt threatened by the much smaller, lighter, and older Camposano, claiming that Camposano said that "I treat him like shit and are always busting his balls." In Bolognese's testimony, he added that Camposano supposedly called him a "fucking prick." Again these seemingly nontrivial details did not find their way into the typed written warning which Bolognese took 2 weeks to prepare. I find that Bolognese exaggerated Camposano's behavior to buttress a questionable management action. In fact, Muesel, even took the unusual step of personally contacting CEO Walsh about this routine disciplinary matter. The record reveals that no other disciplinary matter beyond this and the suspension that followed have ever received this kind of attention.

Third, the relevant portion of the Kevorkian memo does not corroborate Bolognese's factual version of events. Bolognese's warning clearly states that at the start of the incident Camposano "also approached me in a confrontational manner. At that point I should have sent you home, but I did not. I returned to my office. . . ." Thus, according to Bolognese, Camposano approached him in a confrontational manner from the start. Yet, Kevorkian's memo makes no mention of Camposano having approached Bolognese in a confrontational manner. It likewise makes no mention of Camposano ranting and raving or engaging in a tirade.

Kevorkian did not testify. Since Kevorkian remains employed by Respondent as a pressroom supervisor and Respondent offered no explanation for his absence, I will draw the inference that Kevorkian's testimony would not have supported Bolognese's version of events. *Grimway Farms*, 314 NLRB 73 fn. 2 (1994).

An e-mail Muesel wrote to Bolognese on August 9 reveals that Respondent initially wanted even harsher discipline for Camposano, as Walsh apparently instructed Muesel to "Get statements from the witnesses. If they corroborate Rick's account we will suspend Camposano." But Respondent did not suspend Camposano over this incident. In fact, it failed to take

a timely written statement from Supervisors Hawley or Kevorkian at all. Respondent eventually did take a statement from Kevorkian, but not until February 4, 2005, after both unfair labor practice charges had been filed, and even then his statement does not support Bolognese. Bolognese admitted at hearing that he did not hear a single word that Camposano uttered when he was allegedly “ranting and raving” at the other end of the pressroom, behavior which caused Bolognese to confront Camposano again that morning.

Respondent provided no evidence that it conducted a proper investigation. The only supporting documentation apparently created was the Kevorkian memo of February 2005, months after the discipline issued. I believe that Respondent did not take harsher action against Camposano as Walsh had authorized because Respondent discovered that Bolognese’s account of the incident was exaggerated. I further believe based on the credible facts surrounding this incident as well as the subsequent suspension that Bolognese was attempting to create a situation that would justify disciplinary action against Camposano. On the morning of August 6, when the incident occurred, Camposano’s shift was almost over and everyone involved must have been tired and could well have been on edge. To repeatedly confront Camposano three separate times over the span of 15 or so minutes does not sound like a supervisor trying to let one sarcastic comment not escalate into a confrontation. It sounds much more like a supervisor trying to escalate the event so that discipline could be issued.

Respondent’s disparate treatment of Camposano and another employee, Stranz, in the same timeframe also supports a finding that the August 18 written warning was motivated by anti-union animus rather than the stated reason. Although Bolognese admitted that Respondent follows a progressive discipline system that he tried to enforce fairly, the record reveals wide differences in the disciplines previously issued to unit employees and the discipline Camposano received in this case. The record reveals that Bolognese issued discipline to many other employees in the relevant timeframe, and that in all of the other cases, he issued discipline in a timely manner (all within a few days of the incident). Here, by contrast Bolognese inexplicably waited for an inordinate amount of time to issue discipline for behavior, if true, calls for immediate correction if correction was the goal.

With respect to the August 18, 2004 written warning for “unacceptable behavior” on August 6, it appears from the testimony and supporting documentation that the warning is essentially for alleged insubordination. Indeed, the Kevorkian memo calls Camposano’s actions “a clear cut case of insubordination.” Yet the record reveals that not all insubordination is treated equally. Stranz provided credible testimony in this regard.

In September 2004, just weeks after the Camposano written warning, Stranz had a confrontation with Production Manager Muessel, Bolognese’s direct supervisor. Stranz testified without contradiction that Muessel approached him in September about the speed of a “hopper loader” when Stranz told him, “I’d appreciate it if you wouldn’t break my balls,” then walked away. Muessel returned to him and told him he appreciated his frustration with the way things are running, “But don’t ever talk

to me again like that, or I’ll fire you.” Later that day, Muessel told Stranz to report to his office the next morning, but Stranz “snapped back at him, I says, I don’t come in here on my own time.” On his way home that evening, he phoned Camposano, who advised him to do as Muessel said, adding, “Why blow your job?”

Stranz heeded Camposano’s advice, and met with Muessel the next day on his own time. Stranz testified that they mutually apologized to each other, and that Muessel added that “I know we’ve all been under a lot of stress with this Union thing, but it’s all over now. We got to get this behind us and move on. Respondent did not discipline Stranz over this incident. However, unbeknownst to Stranz (and only discovered pursuant to General Counsel’s trial subpoena) it was revealed that in fact Muessel had recorded his version of the incident in a short memo, which largely corroborates Stranz’ version. Thus Stranz, who had far less union activity than Camposano, was sent home 4-1/2 hours early and merely received a secret memo to his personnel file for telling Muessel to stop busting his balls.

Moreover, Stranz’ testimony is consistent with Camposano’s testimony that Muessel made a similar sounding remark to him following the August 6 incident: “I’ll be glad when this Union shit is over, because it’s putting stress on everybody. Muessel, present throughout the hearing, did not rebut any of this testimony.

For the reasons set forth above and for those set out below, I find the motivation for the warning and sending Camposano home in August was not for the reasons asserted by Respondent, but the result of animus toward Camposano because of his union activism, and thus a violation of the Act.

*c. Respondent suspended Camposano in violation of
Section 8(a)(3) of the Act*

As reflected by the entire record, including a review of Respondent’s prehearing position statement, it is clear that the suspension was primarily based on the events of December 23–24, 2004. In spite of this, no discipline issued until January 7, 2005. Respondent argues on brief that this delay was necessary to take the time and steps to ensure that it was on sound legal grounds before imposing discipline. I agree with General Counsel that it appears that the time was taken to build a case against Camposano and for no other reason. Neither Stranz nor Friedlander was questioned about the December 23–24 incident, although both played leading roles. Bolognese never bothered to even ask how long it took Stranz and Camposano to fix the motor. Instead, Respondent seized on Camposano’s minor wiring error as an excuse, or pretext, to issue harsh discipline. There is a total lack of evidence that an in-depth good-faith investigation ever occurred.

In the suspension notice, Respondent blamed Camposano for “failing to demonstrate any urgency in getting the job done” on December 23–24, and claimed that his “actions for this one problem twice jeopardized production.” These claims are not correct. Moreover, Respondent attempted to show during its cross-examination of Camposano that if his wiring mistake had gone undetected serious consequences would have followed. On this point, Respondent introduced no direct evidence of its

own, relying instead on the cross-examination of Camposano and Friedlander.

Respondent's counsel suggested in his cross-examination of Camposano that if the rotation direction had gone undetected, the reel "would have rotated, it would have stopped, and the knife blades would have come down and crashed into the reel and broken." Camposano considered this suggestion and then answered that "a web up on top would have picked up the slack and it would have shut down. The knife would never have come down." Freidlander testified that had he not caught the wiring error the morning of December 24, the pressmen almost certainly would have. As Friedlander credibly explained, "So, assuming they (the pressmen) know which button they were pushing, they would automatically know it's going the wrong way." In the "worst case scenario," in which the pressmen failed to check the press before running it, only then would the web break—but only if the pressmen failed to hit the stop button right away. Freidlander testified that so-called "web breaks" though not desirable, are not uncommon.

Freidlander also testified that pressroom problems occur frequently, and employees are not normally suspended for trying to fix them. Moreover, it is not disputed that Bolognese left work as late as 6 p.m. on December 23, having made no effort to ensure that the problem motor was repaired beyond having Friedlander call Camposano to come in early. If the problem could have catastrophic consequences, why not correct it well before the night's run? Respondent's expert witness, Del Varney, admitted that it would make more sense to correct such a problem in the day time rather than leaving it to chance at night during a press run. Friedlander was not asked to stay over his shift, evidence revealing that the motor problem was not initially deemed such a serious one by either management or its lead mechanic.

What happened was that the motor was much harder to repair and ultimately replace than anyone had anticipated. Further, the night press crew ran into unexpected problems trying to bypass the broken reel. Somehow this was all Camposano's fault.

What was the exact reason for Camposano's discipline? The suspension memo cites a number of reasons, yet in his testimony, Bolognese initially focused on the length of time it took to attempt to fix and then replace the problem motor. Bolognese's testimony that he spoke with Kevorkian at 12:30 a.m. on December 24 is not supported by Kevorkian and is not credible. Bolognese claimed that Kevorkian called him at 12:30 a.m. and told him that "the unit was still hard down and that they were not running the press." But Respondent's press report for the shift contradicts this alleged statement by Kevorkian: the press report shows that the involved press, press A began running at 12:46 a.m. and ran several thousand papers. Similarly, Bolognese's claim that Kevorkian told him that Camposano and Stranz had not even begun to change the motor is simply unsupported by the credible evidence. All such evidence indicated that by 12:30 a.m., Stranz and Camposano were engaged in the process of changing the motor, which by all accounts took them over 2-1/2 hours. Even Freidlander, the only person involved who had actually changed such a motor

until this event, testified that even if a mechanic knew how to do the job, it would take up to 3 hours.

If the time it took to solve the problem of the motor was such a big deal, one would think a manager would have inquired about the facts of what Stranz and Camposano did on the involved evening. But Bolognese did not. He did not question Freidlander or Stranz.

It is undisputed that Camposano made an honest mistake in wiring the motor late in the shift and after hours of work. The mistake caused no problem other than taking Friedlander 10 or 15 minutes to correct. However, until a portion of Bolognese's direct testimony, the primary concern outlined in the suspension memo and in his meeting with Camposano on December 28 was why it took so long to change the motor. Bolognese returned to this theme in his testimony: "Then I asked why he took so long. Why the motor wasn't just changed immediately and it was stated that he had to troubleshoot it and that it's not an easy job." Clearly at the time of the suspension the matter of the length of time Camposano took was the primary concern of Bolognese. However, if that were true, then there can be no rational explanation of why Camposano's partner in the repair and replacement process, Stranz, was not even spoken to about the events of that night, much less disciplined.

Perhaps realizing this blatant disparate treatment of the two workers, Bolognese's reasoning began to shift. On cross-examination, he provided a new version of the problem with Camposano's work: "The problem is that it (the motor) was left running in reverse. That's the problem." When asked how that problem, which was not even revealed to be a problem until 6 or 7 hours later that morning, could have cost the crew a night of production, Bolognese answered, "We run two presses every night. When you don't run one press for some reason you're losing a night of production." Aside from the fact is wrong as Respondent did run press A for a portion of the December 23-24 run, there was no lost production or any other adverse consequence resulting from Camposano's wiring error or the time it took to replace the broken motor.

Respondent failed to keep a consistent story with respect to the reasons for the harsh discipline issued to Camposano, and Respondent's internal documents do not support its version of the events. There is a clear emphasis in the written suspension notice concerning Camposano's lack of "urgency," as it is mentioned three times in various places. Yet Respondent, likely aware of the problems in urging this theory given that Stranz was not disciplined at all and Freidlander effectively negated the notion that the time Camposano took was out of line, attempted to subtly shift its defense at hearing. If Camposano's wiring error was the "real problem," why then is there but one such reference to it in the suspension notice, where there are numerous references to his supposed "lack of urgency?" If this was the "real problem," how is it that Bolognese could recall no discussion of that critical matter in the December 28 meeting to chastise Camposano about his "attitude?" And, why are employees, except for Camposano, not being routinely suspended for honest mistakes? Determining the proper direction of the reelstand is not something that Camposano knew nor did Stranz.

With respect to this suspension, the record is rife with examples of disparate treatment. The record reveals that Respondent only suspends employees under very rare circumstances, and then only for multiple infractions, such as repeated fighting with coworkers. In fact, other than the well-documented fights between pressman John Benedetti and two coworkers, the record is devoid of any evidence of any other employee suspended by Respondent.¹⁷

Employees receive written warnings, not suspensions, for routine performance mistakes. Thus Arleen Claudio received only a written warning for making a mistake which caused five advertisers to be left out of the March 11, 2004 paper. Bolognese issued the warning on March 16, only 5 days after the incident.

Quintin Ying failed to check his work and missed an insert on July 1, 2004; Respondent issued him a written warning on July 7. On April 26, 2004, Robert James disregarded safety procedures (driving too fast moving skids) endangering other employees; he received a warning on April 28. Moreover, company records reveal that employee James had earlier committed "negligence" in his duties and only received a warning for the February 2004 incident. Other employees have left work without notice, caused significant amounts of down time, or waste, yet received only verbal or written warnings.

Even when actual, not hypothetical, production is lost, employees are not routinely suspended. Thus employee Handy caused a loss of 4 hours of production on June 15, 2004; Bolognese noted in the June 17 written warning that "this is not the first time we have plates with the wrong page imposition, and this is not the first time you had to be called in to correct the problem." Finally, the record reveals that Bolognese issued timely warnings to three employees on April 5, 2004 over an incident of April 3, clearly showing that his practice was to timely discipline all employees involved in production problems, including Supervisor Kevorkian. Of course, this was months before the union campaign had begun.

In the instant case, no production was lost as the result of Camposano's and Stranz' work trying to fix the broken motor and ultimately replacing it. No production was lost by the error in rewiring the replacement motor, an error that took only 10 to 15 minutes to fix. Even Friedlander, no supporter of the union effort, was surprised to hear of the harsh discipline meted out to Camposano over this matter. Respondent made no effort to explain the differences in its treatment of Camposano vis a vis other employees as noted herein. The glaring disparate treatment of Camposano supports the inference that the real motive for his discipline was an unlawful one. *Med West Health Care Mgt. Corp.*, 276 NLRB 1300, 1302 (1985). Respondent simply failed to convincingly show that it has followed a consistent pattern of enforcing its rules of conduct, and other employees accused of far more serious misconduct, incidents involving

actual production loss, waste, and loss of advertising, were treated far more leniently. See *Scott Lee Guttering Co.*, 295 NLRB 497 (1989).

Respondent had no good reason for placing all the blame for the December 23–24 incident on Camposano. I believe and find that it did so and punished him harshly, to send a clear message to anyone else contemplating supporting a union organizing effort at its newspaper. If Respondent was truly interested in treating employees fairly and correcting workplace misconduct, rather than seizing on any excuse to discipline the leading union activist and "troublemaker," surely it would have at least interviewed Stranz to find out the truth of the events in question.

Timing of the discipline also supports my finding that it was unlawfully motivated, as Camposano engaged in protected concerted activity just 1 day before Respondent drafted the suspension notice.¹⁸ Respondent offered no plausible reason for the 2-week delay in "correcting" Camposano's "attitude" problem. It has long been observed by the Board that characterizations of an employee's attitude must be viewed with caution, and that "employer complaints about 'bad attitude' are often euphemisms for prounion sentiments, particularly where there is no alternative explanation for the perceived 'attitude' problem. *Boddy Construction Co.*, 338 NLRB 538 (2003). The Board has similarly found that calling an employee a "troublemaker" is evidence of animus. See *United Parcel Service*, 340 NLRB 776 (2003).

The January 5, 2005 "reel #5" incident is a red herring, a virtual nonevent. Unlike the December 23–24 incident, this incident generated no storm of e-mails, no internal memos, and did not even merit a mention in Respondent's prehearing position statement. Bolognese admitted that he would not have suspended Camposano over this incident alone, testimony indicating that Respondent only added this to the mix to try to buttress a questionable management action. Clearly, if Respondent was intent on correcting what it perceived to be an "attitude" problem, it offered no legitimate reason for having waited until January 7, 2005, over 2 weeks from the events of December 24, 2004, to issue corrective discipline. The only intervening event was Camposano's protected conduct in the meeting of January 5. Although Bolognese admitted twice in his testimony that he really does not know whether or not Camposano removed the relay at reel 5 and left it laying in the bottom of the electrical panel, that fact did not stop him from accusing Camposano of having done precisely that. In any event, Respondent evidently felt compelled to add this matter to bolster its case. The introduction of minor unsubstantiated matters that would not warrant discipline standing alone is a further indication of unlawful motive. *Master Security Services*, 270 NLRB 543 (1984).

Based on all of the above, I find that Respondent has failed to rebut the General Counsel's prima facie case. Respondent offered various reasons for suspending Camposano, yet, as shown above, none of them withstand scrutiny. The Board has long observed that relevant in determining motivation is an

¹⁷ See GC Exhs. 23, 24. The record reveals that Respondent suspended the two employees in September 2004 after one employee "spit, pushed and kicked" the second, and the second employee "pushed and struck" the first employee. The first employee was suspended for a partial day and 4 full days, while the second employee was suspended for a partial day and 2 full days.

¹⁸ The January 5, 2005 meeting where in Camposano inquired about alleged promises made during the union campaign and complained that nothing had changed.

employer's "use of a multiplicity of alleged reasons for disciplinary action." *Master Security Services*, supra. And, as the Board has noted, "[w]here an employer's stated motive for discharging an employee is false, the inference is justified that the employee desires to conceal the true motive and that the true motive is unlawful, at least where, as here, the surrounding facts tend to reinforce the inference." *Triple H Electric Co.*, 323 NLRB 549 fn. 2 (1997). Here, the surrounding facts and circumstances, timing of the suspension, and disparate treatment, more than adequately reinforce the inference of unlawful motive. Accordingly I find that Respondent's suspension of Camposano was motivated by antiunion animus and that the reasons it advance were pretextual. Thus Respondent's actions in this regard violate Section 8(a)(3) of the Act.

CONCLUSIONS OF LAW

1. Respondent, Journal Register East d/b/a New Haven Register, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union, Laborers' International Union of North America, Local Union No. 455, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent violated Section 8(a)(1) of the Act by issuing a memorandum asking employees to report to management the union activities of other employees.
4. Respondent violated Section 8(a)(1) and (3) of the Act by issuing a written warning to its employee Robert Camposano on August 18, 2004, and by suspending him on January 7, 2005, because he engaged in union or other protected concerted activities.
5. The unfair labor practices committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily suspended its employee Robert Camposano, it must make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

I shall also recommend that the Respondent be required to remove from its files any reference to the unlawful written warning issued Camposano on August 18, 2004, and the unlawful suspension given Camposano on January 7, 2005, and notify Camposano in writing that this has been done and that it will not use these adverse actions against him in any way.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁹

¹⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be

ORDER

The Respondent, Journal Register East d/b/a New Haven Register, New Haven, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Issuing memorandums to employees asking them to report on the union activities of other employees.
 - (b) Issuing written warnings to employees because they engage in union or other protected concerted activities.
 - (c) Issuing suspensions to employees because they engage in union or other protected concerted activities.
 - (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action deemed necessary to effectuate the policies of the Act.

(a) Within 14 days of this Order, make Robert Camposano whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(b) Within 14 days of this Order, remove from the file of Robert Camposano any reference to his unlawful written warning and suspension and within 3 days thereafter, notify him in writing that this has been done and that his unlawful written warning and suspension will not be used against him in any way.

(c) Preserve, and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place as designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in New Haven, Connecticut, copies of the attached notice marked "Appendix."²⁰ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 18, 2005.

adopted by the Board and all objections to them shall be deemed waived for all purposes.

²⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 31, 2005

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights.

More specifically,

WE WILL NOT ask that you report to us the union activities of your fellow employees.

WE WILL NOT issue written warnings to you because you engage in union or other protected concerted activities.

WE WILL NOT suspend you because you engage in union or other protected concerted activities.

WE WILL remove from the file of Robert Camposano any reference to his unlawful written warning and suspension and notify him of this fact in writing.

WE WILL pay him for any wages and benefits he lost as a result of his unlawful suspension.

JOURNAL REGISTER EAST D/B/A NEW HAVEN REGISTER